

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN**

Dustin Shirley, *on behalf of himself and
others similarly situated,*

Plaintiff,

v.

Rocket Mortgage, LLC,

Defendant.

Case No. 2:21-cv-13007-SFC-KGA

Hon. Judge Sean F. Cox
U.S. District Judge

Hon. Kimberly G. Altman
U.S. Magistrate Judge

**ROCKET MORTGAGE LLC'S MOTION FOR LEAVE TO FILE
UNDER SEAL PORTIONS OF EXHIBIT TO REPLY BRIEF
IN SUPPORT OF ITS MOTION TO COMPEL ARBITRATION
AND DISMISS THE COMPLAINT**

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ISSUE PRESENTED

1. Should this Court grant Defendants leave to file an exhibit containing the proprietary information of a non-party under seal because publicizing such information would cause harm to their business?

CONTROLLING OR MOST APPROPRIATE AUTHORITIES

1. *Cahoo v. SAS Inst. Inc.*, 2020 WL 11563943 (E.D. Mich. July 27, 2020)
2. *Procter & Gamble Co. v. Ranir, LLC*, 2017 WL 3537195 (S.D. Ohio Aug. 17, 2017)
3. *Shane Grp. v. Blue Cross Blue Shield of Mich.*, 825 F.3d 299 (6th Cir. 2016)

INDEX OF DOCUMENTS PROPOSED FOR SEALING

Document	Item to be Redacted	Location	Reason	Opposing Party Objection
Declaration of Manny Wald	Visual Playback URL	¶ 6	Confidential commercial information	No
Exhibit A to Wald Declaration (Guardian TCPA Report)	Visual Playback URL	p. 5	Confidential commercial information	No

INTRODUCTION

Pursuant to Local Civil Rule 5.3(b), Rocket Mortgage, LLC (“Rocket Mortgage”), by and through their undersigned counsel, respectfully submits this Motion for Leave to File Under Seal Portions of Exhibit to its Reply Brief in Support of its Motion to Compel Arbitration and Dismiss the Complaint. Rocket Mortgage respectfully requests that this Court grant its Motion and allow Rocket Mortgage to redact one internet link containing proprietary information of a non-party, from a Declaration and Exhibit.

As required by Local Rule 7.1(a), Rocket Mortgage’s counsel conferred with counsel for the Plaintiff on April 5, 2022. Plaintiff’s counsel does not oppose this motion. There is no active protective order in this case.

BACKGROUND

Plaintiff Dustin Shirley (“Plaintiff”) filed this putative class action under the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227, *et. seq.*, in this Court on December 27, 2021. On February 28, 2022 Rocket Mortgage filed a Motion to Compel Arbitration and Dismiss the Complaint (ECF No. 9) (“Motion to Compel Arbitration”). Plaintiff filed a response in opposition on March 24, 2022 (ECF No. 13). Rocket Mortgage’s Motion to Compel Arbitration shows, and Plaintiff does not dispute, that Plaintiff visited the website LowerMyBills.com where he clicked both a “Calculate” and “Calculate your FREE results” button. *See* Motion to Compel Arbitration, Ex. B. at ¶¶ 12, 15, 17, ECF No. 9-4. Plaintiff’s response in

opposition argues that the screenshot exhibits submitted alongside Rocket Mortgage's Motion are insufficiently readable to support Rocket Mortgage's positions of how the disclosures on the LMB website appeared to Plaintiff when he agreed to them. *See* Opposition to Defendant's Motion to Compel Arbitration and Dismiss the Complaint, at 16-17, ECF No. 13. Along with Rocket Mortgage's reply in support of its Motion, Rocket Mortgage will include further exhibits to allow this Court to determine the readability of the LowerMyBills.com website for itself.

One such exhibit is a declaration from Manny Wald, the Technical Co-Founder of Lead Intelligence, Inc. d/b/a Jornaya ("Jornaya"). Jornaya is a lead source authenticator that runs a proprietary script on the LowerMyBills.com website to capture and verify a consumer's consent to receive calls or text messages. Wald Decl. ¶ 3. Exhibit A to the Wald Declaration is a true and correct copy of a Guardian TCPA Report for the LeadID number associated with Plaintiff's visit to LowerMyBills.com.¹ Both the declaration and report include an internet link to a Visual Playback of Plaintiff's LeadID. Wald Decl. at ¶ 6. This Visual Playback, which is only available to Jornaya's paying clients, contains information about Jornaya's proprietary software that, if obtained by a competitor, risks harming Jornaya's business. Access to the Visual Playback could permit Jornaya's

¹ Exhibits B and C to the Wald Declaration are screenshots of the same playback. Rocket Mortgage is not seeking to file this material under seal.

competitors to reverse engineer the software, which risks harming Jornaya’s business. Jornaya is not a party to this proceeding.

To protect non-party Jornaya’s business interest in securing its confidential commercial information, Rocket Mortgage respectfully requests permission to redact the URLs contained in the Wald Declaration and the Guardian TCPA Report.

AUTHORITIES IN SUPPORT

A. Redaction is Warranted to Protect a Non-Party’s Confidential Commercial Information.

The Court has authority to grant a motion to seal “upon a finding of a compelling reason.” E.D. Mich. L.R. 5.3(b)(3)(C)(i); *see Shane Grp., Inc. v. Blue Cross Blue Shield of Mich.*, 825 F.3d 299, 305 (6th Cir. 2016). Where unredacted filings “detail the proprietary processes” of a business, “[t]hat information amounts to trade secrets which may be protected from public examination on the docket.” *Cahoo v. SAS Inst. Inc.*, 2020 WL 11563943, at *2 (E.D. Mich. July 27, 2020) (citing *Brown & Williamson Tobacco Corp. v. FTC*, 710 F.2d 1165, 1180 (6th Cir. 1983)). Courts in the Sixth Circuit have given parties permission to seal “commercially sensitive information that, if filed publicly, could harm the business interests of [their owner].” *Cincinnati Ins. Co. v. Richfield Corp.*, 2017 U.S. Dist. LEXIS 218021, at *2 (E.D. Mich. Aug. 16, 2017); *Procter & Gamble Co. v. Ranir, LLC*, 2017 WL 3537195, at *3-4 (S.D. Ohio Aug. 17, 2017) (permitting redaction of

“confidential information, including trade secrets, that would harm [plaintiff] if made public”).

Jornaya sells its proprietary software to clients for the purpose of verifying the accuracy of lead information for compliance with the TCPA. Publicly filing the URLs to the Visual Playback of a captured lead event would allow Jornaya’s competitors to access the Visual Playback through the public record. Because the link is otherwise only available to Jornaya’s clients, “public disclosure of this information would allow competitors to have an inside look into” Jornaya’s proprietary technology. *Proctor & Gamble*, 2017 WL 3537195 at *3. This would naturally cause competitive harm to Jornaya as an industry leader in lead verification software.

B. The Proposed Redactions are Narrowly Tailored.

Rocket Mortgage is not seeking to file any exhibit entirely under seal—instead it asks only for permission to redact one URL, accounting for approximately one line of two documents. Courts in the Sixth Circuit have consistently found limited redactions sufficiently “narrowly tailored” for sealing purposes. *See In re Flint Water Cases*, 2021 WL 2254064, at *2 (E.D. Mich. May 20, 2021) (sealing certain lines in brief where redacted material was “no broader than necessary”); *Proctor & Gamble*, 2017 WL 3537195, at *3-4 (“redactions [were] narrowly tailored” where party “seeks only to seal several pages from a 64-page brief”). Here, Rocket

Mortgage seeks only to redact one URL—which is provided as a means for the Court to visit the Jornaya playback and view the Plaintiff's interaction on the LowerMyBills.com website. With these minor redactions “the remainder of the briefs and exhibits,” including screenshots of the same material available in the Visual Playback, “are unsealed and open to the public.” *Flint Water Cases*, 2021 WL 2254064, at *2. Thus, the proposed redactions are narrowly tailored to serve the purpose of protecting non-party Jornaya’s proprietary information without substantially impacting the public’s right to access.

CONCLUSION

For the foregoing reasons, this Court should allow Rocket Mortgage to file exhibits to its reply brief with the proposed redactions.

Respectfully submitted,

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Counsel for Rocket Mortgage, LLC

Dated: April 7, 2022

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 7, 2022, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel of record. Exhibits B and D will be filed under seal and served upon all counsel of record by email.

/s/ W. Kyle Tayman
W. Kyle Tayman